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Supreme Court of the United States

OCTOBER TERM, 1933.

No. 449

E. W. CLARK, as Receiver,
Petitioner,

vs.

HARRY O. WILLIARD, W. W. WHEATON, and C. W. HAY, as Trustees of Gordon Campbell-Kevin Syndicate, a Common-Law Trust, and GORDON CAMPBELL-KEVIN SYNDICATE, a Common-Law Trust,
Respondents.

BRIEF FOR GEORGE S. VAN SCHAICK, AS SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, SUBMITTED AS A FRIEND OF THE COURT.

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Statement.

The Superintendent of Insurance of the State of New York files a brief in this appeal as the issue is of vital importance in the administration of numerous inter-state insurance companies which the New York Department is liquidating. In addition to fourteen title and mortgage companies, among which are the largest and most important in the state, the Department has during the past three years taken over twenty-eight insurance companies with assets having a book value of upwards of $230,000,000. Among

these are the National Surety Company of New York, the largest surety company of its kind in the world, and the Globe and Rutgers Fire Insurance Company, the third largest fire company in the United States. Large inter state companies such as the Southern Surety Company of New York and the Lloyds Insurance Company of America, now in liquidation, did business in practically every state. The fact that upwards of 300,000 notices to creditors were mailed out in the Southern Surety Company proceeding and some 500,000 notices in that of Lloyds Insurance Company is some indication of the wide public interest. The efficient administration of such companies is dependent upon the cooperation of the courts and officials of practically all of the states.

The Importance of Uniform Law and Procedure in the Liquidation of Inter-State Insurers.

The liquidation of large insurers with reasonable promptness under uniform conditions and without preference to creditors, because they happen to live in one state rather than another, is of vital importance to the people of the entire country. It is hoped that the decision of the Supreme Court of the United States in this cause will set at rest many of the doubts, inequalities, and difficulties which now exist and will make for a just and uniform administration of large insurers wherever their domicile. It is for this reason that the Superintendent of Insurance of the State of New York, who bears the brunt of inter-state liquidation, takes the liberty of filing a brief and appearing in this cause as a friend of the Court. It is our intention to dwell upon the public policy of the controversy rather than the discussion of the reported cases so fully covered in the briefs of the parties to the litigation.

The situation is acute, not alone because of unwarranted preferences acquired by local creditors. Even though the ancillary liquidator ultimately prevails, he is forced into [illegible] and compromises which result in the diversion of

assets away from creditors. Liquidation expense out of all proportion to accepted standards is necessarily incurred.

The very fact that doubt exists as to the rights of the domiciliary liquidator causes loss and waste. That doubt is a temptation which causes creditors in foreign states to reach for advantages which are invariably costly to defeat. They are at home and in a friendly forum. The domiciliary receiver is in an unfriendly tribunal and has to go to the expense of hiring special counsel not familiar with the litigation.

If the administration of large inter state insurers which have become delinquent is to be carried out with some degree of efficiency, the primary receivers, particularly where title to the assets is vested in them through the laws of the state of the domicile, must assert generalship over the collection of monies due, the adjudication of the claims against insolvent companies, and the general administration of the assets and affairs throughout the entire country. Efficient and equitable administration is out of the question if liquidations are to be hindered and hampered at every turn and the liquidator is constantly forced to decide between expensive litigation and unfair preferences to local creditors.

A possible solution of this problem, which has become unusually burdensome in these years of the depression, may be federal legislation similar to the Bankruptcy Laws of the United States. In the absence of such legislation greater recognition of the power, authority, and control of the state of the domicile and efficient cooperation by local representatives and ancillary receivers in the various states is essential.

This case presents to the Court the opportunity to set at rest the chaos which now exists, not by establishing any new conception of the problem, but by applying principles already enunciated by this Court in *Relfe* v. *Rundle*, 103 U. S. 222, and *Converse* v. *Hamilton*, 224 U. S. 243.

There is a clear line of demarcation between those cases where the liquidator's rights are asserted under a corporate charter as contrasted with those in which such rights

are asserted under a law or decree apart from or outside of the corporate charter.

The New York Department constantly encounters resistance based on such cases as *Booth* v. *Clark*, 17 How. 322 and *Security Trust Co.* v. *Dodd*, 173 U. S. 624, where the domiciliary liquidator sought to act in a foreign state without the aid of a statutory charter provision. In those cases the domiciliary statutes dealt with were not corporate charter provisions.

While the ordinary statute or court decree has no extra-territorial effect except by comity, when the statute is part of the corporate charter, it has extra-territorial operation because it is a charter provision. When the decree of dissolution is provided for in the charter, it operates abroad not merely as a decree, but as a fundamental provision of the charter itself. The principles relating to statutes which are not also charter provisions are not applicable for the liquidation statute is as vital a part of the charter as though transcribed in full in the document itself.

Specific Examples of Unfair Local Preferences.

While the officials in many states are cooperative they cannot control the tactics of individual creditors. More often than otherwise the laws and court decisions are fair and just, not only to local creditors, but to all creditors; yet the exceptions to the rule are sufficiently numerous to materially slow down liquidation, to create favored classes of creditors, and to cause waste of assets. In New York as in Iowa the Superintendent of Insurance is the statutory receiver and is vested both by statutory charter provisions and by the court with title to the assets of the companies in liquidation. Yet some of the states pay no attention to the fundamental charter provisions:

> In Montana, despite the fact that the Southern Surety Company of New York was dissolved on March 22, 1932, and the assets both by statute and

by court order were vested in the statutory liquidator, a local general creditor thereafter secured a judgment against the Southern Surety Company of New York, although it no longer existed, and attached the property of the Liquidator which was deposited for the benefit of compensation claimants with the Treasurer of the Industrial Accident Board of the State of Montana. The Liquidator is now endeavoring to have the attachment removed.

In Michigan the Commissioner of Insurance of that state, at the request of the New York Liquidator, applied for the appointment of a receiver to take charge of the affairs of the Southern Surety Company of New York in that state. One of the Deputy Insurance Commissioners was appointed receiver, collected the local assets so far as he was able, and began the adjudication of the claims. The day prior to the appointment of the Deputy Commissioner as receiver, a local creditor of the Southern Surety Company applied in a different county and before another judge for the appointment of a receiver in a creditor's action. Such receiver was appointed but did not function. A proceeding was brought, however, to determine which receiver was properly in control and the court decided that as the creditor's action was begun first the receiver appointed in that action was the proper receiver and the appointment of the Deputy Commissioner of Insurance was invalid. While the laws of Michigan are not entirely clear, the Supreme Court of Michigan in deciding that the receiver appointed in the judgment creditor's action had precedence asserted: "When the receiver was appointed, a lien was created in favor of the judgment creditor on the debtor's property in this state. * * * From the moment of his appointment the property of the insolvent debtor in the State of Michigan was in-

custodia legis and the Court had the power to preserve it to satisfy the plaintiff's judgment."

In *McBride* vs. *Wayne Circuit Judge* the Supreme Court of Michigan in a similar proceeding said:

> "The purport of these rules is that a judgment creditor's suit is an individual proceeding to collect a specific debt, not a proceeding for the distribution of the debtor's property among his creditors generally."
>
> *McBride* v. *Wayne Circuit Judge*, 250 Mich. 1.

A substantial part of the property of the Lloyds Insurance Company of America, now being liquidated by the New York Superintendent, is in the State of Michigan. The Superintendent is endeavoring to have a contract entered into between the New York Liquidator and the Receiver in Michigan which will recognize the law of the domicile and provide for the transmittal of the assets to the Liquidator after the expenses of the local receiver, trust funds, and legitimate preferences have been paid. The contract has not been signed, although a similar contract has been signed in a previous liquidation proceeding. The court intimated in its discussion that "the question of law is whether this Court would have the authority to make any such order as is sought by the petition unless it is shown that it would be for the advantage of the creditors in Michigan."

Even in the State of Pennsylvania, which has generally pursued an enlightened policy in such matters, there are decisions to the effect that the local creditors of a foreign insurance company must be paid in full before any assets may be removed from the state. While this rule may not apply to a statutory liquidator the manner of dis-

tribution of such assets is not free from doubt. It is manifestly unfair that general creditors throughout the country receive only ten cents on the dollar while those who happen to reside in Pennsylvania get one hundred cents on the dollar if the insurer happens to have substantial property in that state.

In *Frowert* v. *Blank*, a case in which the receiver of the New York company was attempting to secure control of the funds in the State of Pennsylvania, the Supreme Court of Pennsylvania said:

> "When the funds of the insolvent corporation in Pennsylvania were placed in the hands of the ancillary receiver, they were subject to the claims of the creditors of the corporation in this state. The New York receiver had no lien upon them, and could not take possession without authority of the court, which, as has been seen, would not be granted as against the rights of domestic creditors. * * * The creditors here had but one course to pursue to enforce their claims against the money in the hands of the ancillary receiver, and that was to prove them before the auditor appointed to distribute the fund. * * * We think there was no error committed by the court below in awarding the funds in the hands of the ancillary receiver to the domestic creditors as against the claim of the foreign receiver."

In its opinion the court quotes with approval many cases holding that local creditors are entitled to have their claims satisfied in full before property may be taken out of the state by the primary receiver.

Frowert v. *Blank*, 205 Pa. 299, 54 Atl. 1000.

The New York Indemnity Company was dissolved and title to its assets was transferred to the Superintendent of Insurance February 16, 1933. This company had money on deposit in an

Ohio bank. On May 1, 1933, two months after the dissolution of the company, an action was started by local creditors against the dissolved company and funds in the bank were attached. The Liquidator is now intervening in an effort to prevent the distribution of the assets of the corporation in Ohio to local creditors under the attachment. Another local creditor since the dissolution of the company has begun an action against the dissolved company, although it no longer exists, to recover judgment and also for the attachment of its property in the State of Ohio. Similar actions begun after dissolution are now pending in other states against New York corporations in the hands of the Superintendent for liquidation.

These specific cases are mentioned only as typical of local attacks which are constantly being made upon the rights and assets of the New York insurers by local creditors in other states. While it would seem that the rule laid down by this Court in *Relfe* v. *Rundle*, 103 U. S. 222, and other similar cases cited in appellant's brief would set such litigation at rest, this decision has not been accepted as controlling in many of the states. The facts in the case now on appeal are perhaps more closely in point and present clear cut the issue as to whether the fundamental statutory provisions of the domicile must be recognized in other states as a matter both of comity and of right or whether they may be disregarded whenever it is to the selfish advantage of local claimants.

General Order No. 51 in Bankruptcy.

The same conditions that made necessary the enactment of a national bankruptcy law plead for uniform procedure in the inter-state liquidation of large insurers. This Court has always been jealous of the rights of creditors in the various states to share equally and without unfair prefer-

ence. The Court has also indicated by its recent adoption of General Order No. 51 in Bankruptcy that the appointment of unnecessary ancillary receivers in derogation of the control of the primary receiver will be frowned upon. The liquidator of a large insurance company, like a Receiver in Bankruptcy, must of necessity have general control of the assets and administration of the affairs of the company throughout the United States. General Order No. 51 protects the primary receiver from the appointment of hostile ancillary receivers at the behest of local creditors. Ancillaries in the various states may not be appointed unless the necessity is shown and the primary receiver consents. By this rule the Court has recognized the advisability of the centralization of a proceeding in the hands of the primary receiver. The reasons for preventing interference with the orderly administration of estates in bankruptcy apply equally to inter state insurers.

It is not urged that the rule in bankruptcy is controlling but only that it indicates the intention of this Court to protect primary receivers from molestation, unfair discrimination and annoyance in carrying out the administration of their trusts.

While we promised not to duplicate the discussion of the law which the parties to this litigation have covered in their briefs, we desire to say a word concerning the recent decision of this Court in *Oakes* v. *Lake*, decided November 6, 1933, which counsel for the parties herein have not mentioned. The opinion in that case emphasizes that the rights of the foreign receiver who has been vested with title will be protected in other states as a matter of constitutional right as well as of comity. As the Court says:—

> "(1) The general rule undoubtedly is that an ordinary chancery receiver, having no other authority than that arising from his appointment as such, cannot as of right maintain an action in a state other than that in which he was appointed. The decision in Booth *v.* Clark, 17 How. 322, 15 L. Ed. 164, to that effect has been uniformly followed

by this court. See, for example, Great Western Mining Co. *v.* Harris, 198 U. S. 561, 25 S. Ct. 770, 49 L. Ed. 1163; Sterrett *v.* Second National Bank, 248 U. S. 73, 39 S. Ct. 27, 63 L. Ed. 135. The very terms in which the rule is expressed, however, clearly recognize that where the receiver has 'other authority than that arising from his appointment as such,' he may under some circumstances maintain an action outside the state of his appointment. And so it definitely has been held.

(2) The foreign receiver may maintain such a suit, so far at least as the federal courts are concerned, where title to the property in question has been vested in him by conveyance, or statute. In Bernheimer *v.* Converse, 206 U. S. 516, 27 Sup. Ct. 755, 51 L. Ed. 1163, it was held that a receiver might sue in a foreign jurisdiction to collect upon the statutory liability of stockholders of a corporation, where the statute of the state conferred the right upon the receiver as quasi assignee. Following that decision, this court, in Converse *v.* Hamilton, 224 U. S. 243, 256 et seq., 32 S. Ct. 415, 56 L. Ed. 749, Ann. Cas. 1913D, 1292, while reiterating the rule laid down in Booth *v.* Clark, supra, pointed out that the receiver suing in the Hamilton Case was not merely an ordinary chancery receiver, but much more; that under the laws of the state of his appointment he became a quasi assignee, vested with the rights of the creditors against the stockholders, and charged with the enforcement of those rights in the courts of the state and elsewhere; that his right to maintain an action in another state properly could not be denied as presenting a question only of comity unaffected by the full faith and credit clause of the Federal Constitution. The case involved the right of a receiver of an insolvent Minnesota corporation to maintain a suit in Wisconsin against two stockholders to enforce an asserted double liability imposed by the Minnesota statute. The Wisconsin court refused to entertain the suit, holding it to be a matter of comity; but this court, denying that view, reversed on the ground that thereby the laws of Minnesota and the judicial proceedings of that state had not been accorded the faith and credit to

which they were entitled under the Federal Constitution.

(3) In the case just dealt with, and in other cases where the receivership property has been assigned to the receiver by its owner, the suit is brought not strictly in his capacity as receiver, by virtue of his appointment in another state, but in his capacity as assignee. High, Receivers (4th Ed.) §244. His designation as receiver, etc., in the title of the cause may be regarded as descriptio personae merely.

* * * * * * * * *

In some of the cases cited the courts seem to have put their determination in favor of the receiver upon the ground of comity. With this view, however, we do not agree. It is a matter of right, as this court has said. Converse *v.* Hamilton, supra.

The true rule is stated in Robertson *v.* Staed, supra, by the Supreme Court of Missouri, where it was held that where the receiver has taken possession of property in pursuance of his appointment, a special property is thereby vested in him which enables him to maintain a suit for the recovery of the property in a foreign jurisdiction; and that the principle upon which that may be done is 'one of law and not of comity'."

Oakes v. *Lake*, 54 Sup. Ct. Rep. 13.

The "matter of right", referred to in *Oakes* v. *Lake*, has been disregarded because the state courts too often fail to accord to the statutory charter provision the attributes to which it is entitled.

Sometimes this is deliberate rather than inadvertent and springs from a desire to benefit the local creditor. The desire to benefit the local creditor at the expense of others, while understandable, should not be permitted to prevail against the rights and interest of the country as a whole, nor should selfish local considerations be permitted to prevent the application of the principles of equity and justice clearly enunciated and repeated by this Court.

In the interests of orderly liquidation, and the rights of all creditors wherever situate to share equally in the assets; to prevent interference with the control of those entrusted with the liquidation of large inter state corporations it is respectfully submitted that the decision of the Montana Supreme Court should be reversed.

LOUIS H. PINK,
Attorney for George S. Van Schaick, as Superintendent of Insurance of the State of New York.

SUPREME COURT OF THE UNITED STATES.

No. 449.—October Term, 1933.

E. W. Clark, As Receiver, Petitioner,
vs.
Harry O. Williard, W. W. Wheaton, and C. W. Hay, As Trustees of Gordon Campbell-Devin Syndicate, et al., Respondents.

On Writ of Certiorari to the Supreme Court of the State of Montana.

[April 2, 1934.]

Mr. Justice Cardozo delivered the opinion of the Court.

The question is whether full faith and credit has been given by the courts of Montana to the statutes and judicial proceedings of the State of Iowa. United States Constitution, Art. IV, § 1.

The petitioner, the official liquidator of an Iowa insurance company, declares himself the universal successor of the corporation (*Keatley* v. *Furey*, 226 U. S. 399, 403, 404), the representative of its personality and powers after its life has been extinguished. *Relfe* v. *Rundle*, 103 U. S. 222; *Martyng* v. *American Union Fire Insurance Co.*, 216 N. Y. 183; *Deschenes* v. *Tallman*, 248 N. Y. 33, 37. The Supreme Court of Montana has held that his title to the assets, if he has any, is derived, not from any statute, but from an involuntary assignment under a judgment of a foreign court. A title traced to such a source is subject in Montana to attachment and execution at the suit of local creditors. The question has been left unanswered whether attachments and executions are enforcible to the same extent in derogation of the title of a statutory successor.

Federal Surety Company was organized as an insurance corporation under the laws of Iowa, and thereafter received authority to do business in Montana. In September, 1931, the State of Iowa sued it, alleging its insolvency and praying for a decree of dissolution and the distribution of the assets. A statute of Iowa provides that "the commissioner of insurance henceforth shall be the receiver and/or liquidating officer for any insurance company,

association or insurance carrier, and shall serve without comp
sation other than his stated compensation as commissioner of
surance, but he shall be allowed clerical and other expenses ne
sary for the conduct of such receivership." Code of Iowa, 1
§ 8613-e-1. See also Code of Iowa, 1931, §§ 8402, 8964. On S
tember 29, 1932, a decree in favor of the state was entered by
fault, and an amended decree on December 27 of the same y
By these decrees the corporation was adjudged to have been
solved on September 25, 1931; the Commissioner of Insurance
W. Clark, was adjudged to be "the successor to said corporatio
and as such to hold "title to all property owned by Federal Su
Company at the time it so ceased to exist;" and liquidation
decreed in accordance with the statute.

We have said that the corporation had authority to do busi
in Montana. The grant was subject to conditions. A statut
Montana provides that the dissolution of a corporation does
"take away or impair any remedy given against any such
poration, its stockholders or officers, for any liability which
been previously incurred." See 6013, Montana Revised C
of 1921. The preservation of existing remedies is not confine
domestic corporations. It applies to foreign corporations
This results, in the view of the Montana court, from a provisio
the state constitution as well as from a supplementary statute.
Article XV, § 11, of the Montana constitution, "no company
corporation formed under the laws of any other country, stat
territory, shall have, or be allowed to exercise or enjoy wi
this state any greater rights or privileges than those possessed
enjoyed by corporations of the same or similar character cre
under the law of the state." And by a supplementary sta
§ 6059, Revised Codes, 1921: "All foreign corporations licen
to do business in the state of Montana shall be subject to all
liabilities, restrictions, and duties which are or may be impo
upon corporations of like character organized under the laws
this state, and shall have no other or greater powers." Cons
ing that statute, the Supreme Court of Montana has written
the case now under review: "Suits against domestic corporat
do not abate upon the entry of a decree of dissolution, and
same rule by virtue of this statutory provision, must apply
foreign corporation."

Long before the dissolution of the Federal Surety Company, the respondents Williard and Wheaton, as trustees of a syndicate, brought suit in a Montana court to recover from the surety company the damages due upon a bond. The first trial resulted in a nonsuit, which was reversed upon appeal. 91 Mont. 465. After the decree of dissolution the case came on for a second trial, and on May 10, 1932, judgment in favor of the plaintiffs was entered by default. The Supreme Court of Montana has held that the dissolution of the surety company did not abate the suit. There was thus a final judgment, valid under the Montana practice and effective according to that practice to liquidate the claim.

To say that there was such a judgment is not to dispose of the whole case. A judgment existing, the remedies available to enforce it are still to be determined. Before the respondents were in a position to issue execution, the situation had been complicated by a suit for the appointment of a receiver begun in a Montana District Court. On March 25, 1932, Meyer, a simple contract creditor, brought suit against the surety company and Clark, the foreign liquidator, praying an ancillary receivership to preserve the local assets. A temporary receiver (Crichton) was appointed the same day. While that suit was pending, the respondents filed a petition on May 21, 1932, for leave to issue an execution against securities and moneys which had been discovered in Montana, the levy to have the same effect as if no receiver had been appointed. An order to that effect was granted, subject, however, to a later motion to vacate it. Within due time thereafter, Clark, filed a cross petition and an answer, asserting his title as successor to the dissolved corporation, opposing the demands of the judgment creditors, and setting up his rights and privileges under Art. IV, § 1, of the federal constitution. On August 25, 1932, the District Court of Montana entered a final decree adjudging that Clark was the successor to the personality and title of the Iowa corporation, that the assets should be liquidated and ratably distributed subject only to the liens existing at the date of dissolution, that Crichton should be continued as an ancillary receiver to assist the foreign liquidator, that the assets in Montana should be retained in that state until local creditors had received their ratable proportion of assets there and elsewhere, and that the execution upon the respondents' judgment and any preference thereby created, as well

as the earlier order sanctioning the levy, should be set aside and cancelled.

From that decree, and from an order denying a motion to vacate or modify it, the judgment creditors, who are the respondents in this court, appealed to the Supreme Court of Montana. After argument and reargument, the decree and order were there reversed, two members of the court dissenting. *Mieyr* v. *Federal Surety Company*, 23 Pac. (2d) 959. The court held that the respondents' judgment had been lawfully recovered though the defendant was dissolved; that the ancillary receivership was void for the reason that a simple contract creditor (Mieyr) was without standing to maintain the suit; that Clark, the foreign liquidator, was not the successor to the corporate personality with a title derived from the statutes of the domicile, but was a chancery receiver with a title (if any) created by the Iowa decree; that as against such a receiver creditors in Montana were at liberty to levy attachments and executions, irrespective of their right to enforce such a levy against a statutory successor; and hence that the respondents' execution should be reinstated, and the cause remanded for further proceedings in accord with the opinion. A writ of certiorari brings the case here.

Our jurisdiction to issue the writ is challenged on the ground that the decree to be reviewed is without the requisite finality. Judicial Code, §237; 28 U. S. C., § 344. The challenge should not prevail. The decree of the Montana court is final to the extent that it confirms the respondents' execution and permits a levy that will override the liquidator's title. A final order results where a court denies a petition by an intervening creditor to establish a prior lien (*Gumbel* v. *Pitkin*, 113 U. S. 545, 548), or a petition by a municipal corporation intervening in a foreclosure suit to enforce a lien for taxes superior to the mortgage (*Savannah* v. *Jesup*, 100 U. S. 563, 564, 565), or one by a chancery receiver appointed by a state court for the delivery of property in the possession of another court. *Ex parte Tiffany*, 252 U. S. 32, 36. Cf. *Hovey* v. *McDonald*, 109 U. S. 150, 155; *Williams* v. *Morgan*, 111 U. S. 684, 689; *United States* v. *River Rouge Co.*, 269 U. S. 411, 414; *Dexter Horton National Bank of Seattle* v. *Hawkins*, 190 Fed. 924, 927. The doctrine of those cases is applicable here. Further judicial proceedings may be necessary between the liquidator and others not

before us. As between the liquidator and the respondents claiming as judgment creditors the suit is at an end. They came into court *pro interesse suo* with a petition to establish the priority of their judgment. The petition has been granted and priority decreed. Not only that, but an order vacating the execution has been reversed, and the levy reinstated. So far as these respondents are concerned, there is nothing more to be decided. "The property of the Federal Surety Company within the state of Montana at the time of the levy of the execution by Williard et al., not being in possession of the Iowa receiver, was subject to levy, and the levy made under the execution in May, 1932, is good and valid." By that opinion, which by reference was incorporated in the judgment (*Metropolitan Water Co.* v. *Kaw Valley District*, 223 U. S. 519, 523; *Gulf Refining Co.* v. *United States*, 269 U. S. 125, 135), nothing was left to the discretion of the trial court in respect of the priority of the execution or of the respondents' rights thereunder. The intervening petition has been finally disposed of, and no longer is a pending proceeding, whatever may be said of the suit in which the claimants intervened. Cf. *Forgay* v. *Conrad*, 6 How. 201, 202, 203; *United States* v. *River Rouge Co., supra.*

Jurisdiction being here, the case will be considered on the merits.

We assume in accordance with the decision of the Montana court that the respondents' action against the surety company did not abate on dissolution, but was lawfully pursued to judgment. *McGown* v. *Scales*, 9 Wall. 23; cf. *Sinnott* v. *Hanan*, 214 N. Y. 454, 458, 459; *Marstaller* v. *Mills*, 143 N. Y. 398, 400. Cases such as *Remington & Sons* v. *Samana Bay Co.*, 140 Mass. 494, and others cited in the margin[1] are not at war with this conclusion. They express the rule to be applied when there is no statute or public policy to the contrary in the state where the foreign corporation has been licensed to do business. They do not delimit the capacity of a state, when granting such a license, to subject it to conditions. Complications might exist if there had been no one within the state upon whom process could be served. Here the action was begun, and the company had appeared and answered, before the date of dissolution. Moreover, a power of attorney was on file, pursuant

[1]National Surety Co. *v.* Cobb, 66 F. (2d) 323; Marion Phosphate Co. *v.* Perry, 74 Fed. 425; Fitts *v.* National Life Association of Hartford, 130 Ala. 413, Riddell *v.* Rochester German Insurance Co., 35 R. I. 45; Morgan *v.* New York National Building & Loan Association, 73 Conn. 151.